Supreme Court, U.S.
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No. OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

JOE E. EDWARDS ..... *Petitioner*

VS.

STATE OF ARKANSAS ..... *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I.

WHETHER AN INVOLUNTARY COMMITMENT MAY CONSTITUTE PUNISHMENT FOR PURPOSES OF DOUBLE JEOPARDY WHERE THE STATE'S PURPOSE FOR THE COMMITMENT IS TO PREVENT AN INDIVIDUAL'S CONSTITUTIONAL RIGHT TO BAIL.

II.

WHETHER THE STATE WRONGFULLY WITHHELD EXCULPATORY EVIDENCE WHICH SUPPORTED EDWARDS' CLAIM OF DOUBLE JEOPARDY.

LIST OF PARTIES

The parties to this proceeding are as follows:

The Petitioner is Joe Edwards.

The Respondent is the State of Arkansas.

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

JOE E. EDWARDS ..... *Petitioner*

vs.

STATE OF ARKANSAS ..... *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

PETITION FOR WRIT OF CERTIORARI

OPINIONS DELIVERED BELOW

The opinion of the Arkansas Supreme Court is reported at 328 Ark. 394, 943 S.W.2d 600 (1997) and is printed in its entirety at Appendix A hereto. The unreported October 12, 1995 Order by the Honorable Kim Smith, denying Edwards' motion to dismiss based on double jeopardy, is printed at Appendix B. The unreported March 20, 1995 Order by the Probate Court, involuntarily committing Edwards is reprinted at Appendix C.

GROUNDS UPON WHICH JURISDICTION IS INVOKED

This Petition arises out of an interlocutory appeal from the denial of Edwards' Motion to Dismiss criminal charges, for kidnapping and terroristic threatening, based on double jeopardy.[1]

The Opinion of the Supreme Court of Arkansas was delivered on May 5, 1997 (see Appendix A). A timely Petition for Rehearing was denied, without opinion, on June 9, 1997, and this Petition for a Writ of Certiorari is being filed within 90 days of that date. A copy of the order denying the Petition for Rehearing is printed as Appendix G to this Petition. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS

Amendment V of the Constitution of the United States provides in pertinent part:

> [N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb . . .

Amendment VIII of the Constitution of the United States provides in pertinent part:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

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[1] An order denying a motion to dismiss based on double jeopardy is an appealable decision. *Abney v. United States*, 431 U.S. 651 (1977).

STATUTORY PROVISIONS INVOLVED

[Pertinent text is set forth in Appendix H as provided in Rule 14.1(f) of the Rules of the Supreme Court.]

Arkansas Code Annotated § 20-47-207 (Michie Repl. 1991) page H-1.

Arkansas Code Annotated § 20-47-208 (Michie Repl. 1991) page H-2.

STATEMENT OF THE CASE

On March 17, 1995, Edwards kidnapped his attorney, David Stills, at gun point and took him to Edwards' residence in Springdale, Arkansas, where he tied him to a table with duct tape and neck ties, threatened to kill him, and then sought out a second proposed victim, his own wife. Edwards was arrested and charged with kidnapping and terroristic threatening on March 17, 1995. (Appendix N)

On Monday morning, March 20, 1995, while Edwards was still in custody and in lieu of an initial appearance, the State initiated and prosecuted a Petition to Involuntarily Admit Person With Mental Illness (hereinafter "Petition") (see Appendix M), based solely on the offenses he committed on March 17, 1995.[2] The State was successful and thirty-six (36) minutes after the Petition was filed, it was granted without a hearing. (Abstract and Brief of Appellant p. 53)[3]

The State filed a Felony Information (Appendix N) against Edwards and charged the same offenses contained in the Petition on July 24, 1995, the date he was scheduled

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[2] In Arkansas, involuntary commitments are governed by Arkansas Code Annotated § 20-47-207 (Michie Repl. 1991). (Appendix H) The role of the prosecutor in involuntary commitment proceedings is governed by Arkansas Code Annotated § 20-47-208 (Michie Repl. 1991). (Appendix H)

[3] In Arkansas appellate practice, the abstract is the appellant's abridgment of the record. An abstract consists "of an impartial condensation, without comment or emphasis, of only such material parts of the pleadings, proceedings, facts, documents, and other matters in the record as are necessary to an understanding of all questions presented to the Court for decision." Ark. Sup. Ct. Rule 4-2(a)(5).

to be released. (Appendix A, p. 3) The Probate Court extended his commitment until July 28, 1995. Edwards was not arraigned until July 27, 1995. (Appendix A, p. 3) Accordingly, he did not have an initial appearance for more than four months after his arrest.

On September 15, 1995, Edwards filed a Motion to Dismiss based on double jeopardy and also moved to bar the State from challenging the issue of mental illness because it had already proved Edwards to be mentally ill. (Abstract and Brief of Appellant, pp. 2-3) On October 12, 1995, the Honorable Kim Smith, Washington County Circuit Judge, denied the Motion to Dismiss. (Appendix B)

On October 12, 1995, Edwards filed a timely Notice of Appeal.[4] Edwards' Appellate Brief raised four points for reversal, including double jeopardy based on the State's prior involuntary commitment. On appeal Edwards argued that the State either thought he was mentally ill when it involuntarily committed him or it locked him up to prevent him from making bail. (Abstract and Brief of Appellant, pp. 58 and 67)

In February of 1997, a civil trial arising out of the same offenses was held. One of the witnesses was Detective Steve Parker of the Springdale Police Department, who investigated the criminal matter and signed the Petition. (Appendix A, pp. 1-2) Parker testified at the civil trial he believed Joe Edwards had a constitutional right to make bail. (Appendix I, p. 9) Previously, Parker had stated he did

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[4]Jurisdiction of the appeal was assigned at the outset to the Arkansas Court of Appeals and later transferred to the Supreme Court of Arkansas. See Rule 1-2 of the Rules of the Supreme Court of Arkansas.

not know whether Edwards was mentally ill. (Abstract and Brief of Appellant, p. 21) However, Parker believed if he did not sign the Petition and Edwards made bail, he would pose a threat to David Stills. (Appendix I, pp. 8-9) Parker also stated he thought "Edwards was still a threat to Mr. Stills and being in a mental facility would keep him there for a while." (Appendix I, p. 12) Moreover, Parker testified if Edwards was not admitted to a hospital, there would have been nothing to keep him from making bail. (Appendix I, p. 11)

On March 4, 1997, the civil trial ended. On March 25, 1997, Edwards promptly filed a Motion To Remand To The Trial Court For A Hearing, Or In The Alternative, To Supplement The Record In The Supreme Court of Arkansas based on Detective Parker's exculpatory testimony. (Appendix I) Edwards argued this was exculpatory evidence which the State had an obligation to disclose because it fully supported Edwards' claim of double jeopardy.

On April 14, 1997, the Supreme Court of Arkansas denied Edwards' motion without discussion. (Appendix D) However, a member of the court questioned the State's failure to disclose exculpatory evidence during oral argument. (Appendix J)

The Court affirmed the trial court's decision on May 5, 1997, stating that "double jeopardy protection attaches only when a person is put at risk of being punished twice for the same offense." (Appendix A at pp. 7-9) However, the Court held that treatment for mental illness did not constitute "punishment even when the commitment is based on a criminal event." (Appendix A, p. 7) The Court relied on Federal law because it held that "same offense"

is an element of double jeopardy prohibited by the United States Constitution. (Appendix A, p. 7) *See Cohen v. Cowles Media Co.*, 501 U.S. 663, 667 (1991).

Edwards filed a Motion to Stay the Mandate pending this Court's decision on the Petition for Writ of Certiorari. The Supreme Court of Arkansas denied the Motion to Stay the Mandate on June 16, 1997. (Appendix E) This matter is set for trial on October 27, 1997. (Appendix F)

ARGUMENT

I.

WHETHER AN INVOLUNTARY COMMITMENT MAY CONSTITUTE PUNISHMENT FOR PURPOSES OF DOUBLE JEOPARDY WHERE THE STATE'S PURPOSE FOR THE COMMITMENT IS TO PREVENT AN INDIVIDUAL'S CONSTITUTIONAL RIGHT TO BAIL.

The Supreme Court of Arkansas erred in ruling the State's criminal prosecution of Edwards is not barred by double jeopardy due to the State's prior involuntary commitment of Edwards. The Court decided an important question of federal law: Whether an involuntary commitment may constitute punishment for purposes of double jeopardy where the State's purpose for the commitment is to prevent an individual's constitutional right to bail. This issue has not been, but should be, settled by this Court because it is a case of first impression.

A. *General Protection of the Double Jeopardy Clause*

The double jeopardy clause of the United States Constitution prevents the State from prosecuting Edwards for the same offenses which were the basis of the State's involuntary commitment. The double jeopardy clause of the Fifth Amendment provides no person shall "be subject for the same offense to be twice put in jeopardy of life or limb."

Moreover, this clause has three guarantees:

It protects against a second prosecution for the same offense after acquittal. It protects against a second

> prosecution for the same offense after conviciton. And it provides against multiple punishments for the same offense.

Schiro v. Farley, 510 U.S. 222, 129 (1994). Under the double jeopardy clause, "the prohibition against multiple trials is the controlling constitutional principle." *United States v. Difrancesco*, 449 U.S. 117, 132 (1980).

The present case focuses on the issue of multiple punishment. This Court has held "If there is anything settled in the jurisprudence of England and America, it is that no man can be twice lawfully punished for the same offense." *United States v. Halper*, 490 U.S. 435, 440 (1989), citing *Ex parte Lange*, 85 U.S. (18 Wall.) 163, 168 (1874).

B. *Application of the Double Jeopardy Clause to Civil Proceedings*

The double jeopardy clause protects against "multiple punishments for the same offense," regardless of whether one of the proceedings is civil and one criminal. *Halper*, 490 U.S. at 438-439. The courts have articulated a two-part test in determining whether the protections of the double jeopardy clause are applicable. The first question is whether the civil sanction constituted "punishment." *United States v. Kayne*, 90 F.3d 7, 10 (1st Cir. 1996).[5] The second question is whether the purported punishments are for the same offense. *Halper*, 490 U.S. at 439.

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[5]Although the Fifth Amendment specifically mentioned only harm to "life or limb," it is well settled that the Fifth Amendment covers "imprisonment" and "monetary penalties." *Department of Revenue of Montana v. Kurth Ranch*, 511 U.S. 767, 769 n.1 (1994).

1. *Civil Commitment as "Punishment"*

The first question before this Court is whether and under what circumstances an involuntary commitment may constitute punishment for the purposes of double jeopardy.

> In determining whether a particular civil sanction constitutes criminal punishment, [it is] the *purposes* actually served by the sanction in question, not the underlying nature of the proceeding giving rise to the sanction, that must be evaluated.

Halper, 490 U.S. at 447 n.7. Because the constitutional protection afforded by the Fifth Amendment is intrinsically personal, a violation of the amendment "can be identified only by assessing the character of the actual sanctions imposed on the individual by the machinery of the State." *Id.* In determining whether a defendant has been placed in double jeopardy, the "legislature's description of a statute as civil does not foreclose the possibility that it has a punitive character." *Department of Revenue of Montana v. Kurth Ranch*, 511 U.S. 767, 777 (1994).

One way an individual could be punished is to be denied his right to bail as guaranteed by the Eighth Amendment. The intent of the Eighth Amendment is to prevent the infliction of punishment prior to conviction. *Stack v. Boyle*, 342 U.S. 1, 4 (1951). There, this Court stated, "Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning." *Id.* Here, Edwards was denied his right to bail prior to trial and, thereby punished for the offenses of March 17, 1995.

While the Supreme Court of Arkansas recognized that civil commitment results in a significant deprivation of liberty that requires due process protection, citing *Addington v. Texas*, 441 U.S. 418 (1979), the court held double jeopardy could not attach to civil commitments. (Appendix A, p. 6)[6] This holding is contrary to the reasoning articulated in *Halper* which requires evaluation of the *purposes* actually served by the sanction in question, not the underlying nature of the proceeding. *Halper*, 490 U.S. at 447 n.7.

In *Halper*, this Court found the labels "criminal" and "civil" are not of paramount importance because it is understood civil proceedings may advance punitive as well as remedial goals, and, conversely, punitive and remedial goals may be served by criminal penalties. *Id.*

> The notion of punishment, as we commonly understand it, cuts across the division between the civil and the criminal law. And for the purposes of assessing whether a given sanction constitutes multiple punishment barred by the double jeopardy clause, we must follow the notion where it leads.

Id. citing *Hicks v. Feiock*, 485 U.S. 624, 631 (1988). This Court further stated:

> [T]he labels affixed either to the proceeding or to the relief imposed . . . are not controlling and *will not be allowed to defeat the applicable protections of federal*

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[6] Significantly, the court noted in the area of civil commitments, there are some circumstances which lend themselves to prosecutorial misconduct. "Using civil commitment to take a person off the streets without just cause comes to mind as a potential abuse." (Appendix A, p. 10)

constitutional law.

Halper, 490 U.S. at 448 (emphasis added).

Although *Halper* specifically addressed civil *sanctions*, the present case raises the issue of whether a civil *commitment* may constitute punishment for the purposes of double jeopardy. Under the reasoning articulated in *Halper*, double jeopardy attached because the State's motive, intent or "purpose" in the involuntary commitment proceeding was to prevent Edwards from making bail.

The involuntary commitment proceedings initiated and orchestrated by the State were pretextual in nature as a means to accomplish what it could not accomplish under the Constitution of the United States.[7]

Detective Parker did not have any contact with Mr. Edwards prior to the commitment proceedings other than passing him in the hall on March 17, 1995. (Abstract and Brief of Appellant, pp. 18 and 25) The prosecuting attorney called Parker and said he needed to come to the prosecutor's office on Monday morning, March 20, 1995, to sign the Petition. (Abstract and Brief of Appellant, p. 19) Parker had no knowledge of the Petition prior to his arrival at the prosecutor's office, where he found that the Petition was already prepared and awaiting his signature. (Abstract and Brief of Appellant, p. 22) He did not even recall reading the Petition prior to signing it. (Abstract and

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[7] Edwards does not argue that double jeopardy attaches to every involuntary civil commitment which is based on criminal offenses. Edwards' argument is limited to this fact situation in which the State's *purpose* for the involuntary commitment proceeding was to keep him "off the street" by preventing him from making bail.

Brief of Appellant, p. 19) Parker totally relied on and trusted the prosecutor. (Abstract and Brief of Appellant, p. 20) He did exactly what the prosecution asked. (Appendix I, p. 7)

The Petitioner, Parker, was required to state under oath his belief that the individual named in the petition met the criteria for involuntary commitment. Ark. Code Ann. § 20-47-207. However, the evidence shows Detective Parker had no personal knowledge of the facts he averred. Nonetheless, Parker signed the Petition and Affidavit verifying the truth of the facts alleged in the Petition even though he had not met Edwards and did not know whether Edwards was mentally ill. (Abstract and Brief of Appellant, p. 21)

In affirming the trial court, the Supreme Court of Arkansas relied on a statement allegedly made by David Stills to a third party. According to Parker, Stills stated:

> Joe's gone off the deep end. He's accusing me of having sex with his wife and giving her drugs and he was going to kill us both and then himself. (Appendix A, p. 1)

This statement was not included in the Petition. (Appendix M) Nor was a hearing held on the Petition. (Abstract and Brief of Appellant, p. 22) The Probate Court did not rely on this statement in involuntarily committing Edwards because the Probate Court relied solely on the Petition prepared by the State. (Appendix C)

2. *Civil Commitment and Criminal Prosecution as "Same Offense"*

The State initiated and prosecuted involuntary commitment proceedings against Edwards based solely on the

kidnapping and terroristic offenses. The Petition stated Edwards was believed to have a mental illness and should be involuntarily admitted to the appropriate receiving facility or program. (Appendix M) The Petition was based solely on the offenses of March 17, 1995, which were the same offenses with which he was criminally chargd. (Appendix N) The State was successful and the Petition was granted. The State deprived Edwards of his liberty for the same offenses for which it now seeks to prosecute him.

The State thought the proceedings and its involvement was over once Edwards was involuntarily committed because the State didn't file a Felony Information criminally charging Edwards until July 24, 1997, the date he was scheduled to be released. This was more than four months after his arrest. (Appendix A, p. 3) Accordingly, the State thought Edwards was taken care of as long as he was "off the streets" and civilly committed.

The record demonstrates that the State was the movant for the involuntary commitment as well as the criminal charges. Accordingly, it is impossible to distinguish between the entity which seeks to prosecute Edwards and the entity which civilly committed Edwards. It is one and the same. Because Edwards has been punished for these offenses, the State is prohibited by the double jeopardy clause from punishing him again. See *Halper*, 490 U.S. at 439 and *Stack*, 342 U.S. 1.

II.

WHETHER THE STATE WRONGFULLY WITHHELD EXCULPATORY EVIDENCE WHICH SUPPORTED EDWARDS' CLAIM OF DOUBLE JEOPARDY.

Edwards has maintained the State sought to punish him for the March 17, 1995 incident by involuntarily committing him and denying him his constitutionally guaranteed right to bail. Edwards filed motions requesting that the prosecution disclose all exculpatory evidence on August 2, 1995. (Appendix K and L) The prosecution wrongfully withheld the requested evidence. Moreover, the Supreme Court of Arkansas erred in failing to hold that the exculpatory evidence supported a finding that the State's *purpose* in the involuntary commitment was to prevent Edwards from making bail.[8]

A. *State's Duty to Disclose Exculpatory Evidence*

In *Brady v. Maryland*, this Court held suppression by the prosecution of evidence favorable to an accused violates due process, where the evidence is material to either guilt *or to punishment*, irrespective of the good faith or bad faith of the prosecution. *Brady v. Maryland*, 373 U.S. 83 (1963) (emphasis added). Withholding evidence of a violation of the double jeopardy clause is material to punishment and

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[8] Edwards expressly and promptly raised the exculpatory evidence issue. Edwards requested that the record be supplemented or a hearing held. (Appendix I) The Supreme Court of Arkansas denied his request. (Appendix D) Therefore, this Court has appellate jurisdiction of this issue because this is a Federal issue raised [pressed] by the Petitioner and decided [passed] by the State Court below. *See Illinois v. Gates*, 462 U.S. 213, 217-218 (1983).

accordingly a violation of due process because double jeopardy bars a second punishment for the same offense. *See Halper*, 490 U.S. at 438-439.

In *United States v. Bagley*, 473 U.S. 667 (1985) this Court explained that the *Brady* decision requires disclosure of evidence that is material and favorable to the accused. Exculpatory evidence and impeachment evidence fall within the *Brady* rule. This is " 'evidence favorable to an accused' so that, if disclosed and used effectively, it may make the difference between conviction and acquittal." *Id.*, citing *Brady*, 373 U.S. at 87.

> The evidence is material only *if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different*. (emphasis added)

Bagley, 473 U.S. at 682; *See also Kyles v. Whitley*, 115 S.Ct. 1555, 1565 (1995).

This Court further noted that the *Brady* rule is based on the requirement of due process and ensures that a miscarriage of justice does not occur. *Bagley*, 473 U.S. at 675. An incomplete response from the prosecutor not only deprives the defendant of certain evidence, but it has the effect of representing to the defendant that the evidence does not exist. This representation may have adverse effects on the course of his defense. The reviewing court may consider *any* adverse effect that the prosecutor's failure to respond might have had on the presentation or preparation of the defendant's case. *Id.* at 683.

Bagley also explained the role of a prosecutor in connection with the disclosure of favorable evidence to the accused. This Court noted that the prosecutor's role

transcends that of an adversary because he represents the State whose interest in a criminal prosecution is not that it shall win a particular case, but that justice shall be done. *Id.* While a prosecutor may have some question whether he is required to disclose particular evidence, the prudent prosecutor will resolve any doubtful questions in favor of disclosure. *Id.* at 1568.

The consequences of a failure to disclose are set forth in *Bagley*. The suppression of evidence amounts to a constitutional violation if it deprives the defendant of a fair trial. The conviction must be reversed if the evidence is material in the sense that its suppression undermines confidence in the outcome of the trial. *Id.* at 678. Materiality is determined by whether there is a "reasonable probability" there would have been a different result if the evidence had been disclosed. *Id.*

> The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.

Kyles, 115 S.Ct. at 1566.

B. *Application of the State's Duty to Disclose Exculpatory Evidence*

Subsequent to Edwards' appeal being lodged with the Supreme Court of Arkansas, the civil trial, based on the same offenses, was held and exculpatory testimony was elicited which directly supported Edwards' double jeopardy claim. Because Edwards appealed the trial court's denial of his Motion to Dismiss through an interlocutory appeal, he was not privileged to evidence which came out

later during the related civil trial. The State, on the other hand, was privy to this testimony because it was given by Detective Parker. Knowledge of a police officer is attributable to the State. *See Kyles v. Whitley*, 115 S.Ct. 1555, 1568 (1995).[9]

Moreover, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." *Id.* at 1567. The basis of Edwards' argument throughout the trial court proceedings and on appeal was that the State had him committed to *purposely* prevent him from making bond or bail. In fact, Edwards specifically argued "[i]f the State did not think Edwards was mentally ill, then *the State's only interest was to lock him up where he could not make bail*." (Abstract and Brief of Appellant p. 58)

During the civil trial, Parker testified he believed Joe Edwards had a constitutional right to make bail. (Appendix I, p. 9) Moreover, Parker believed if he did not sign the petition and Edwards made bail, Edwards would pose a threat to David Stills. (Appendix I, p. 8) Parker specifically

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[9] This Court noted that there are times when police investigators fail to inform a prosecutor all they know. Suppression of evidence by the prosecution favorable to a defendant upon request violates due process where the evidence is material to either guilt or punishment, regardless of the good faith or bad faith of the prosecutors. *Kyles*, 115 S.Ct. at 1565. Procedures and regulations can be established to ensure disclosure of all relevant information. *Id.* at 1568 citing *Giglio v. United States*, 405 U.S. 150, 154 (1972). Accordingly, the Prosecutor will not be excused for failure to disclose the exculpatory evidence because he has the means to discharge the government's *Brady* responsibilities if he so chooses.

testified that he believed, "Edwards was still a threat to Mr. Stills and being in a mental facility would keep him there for a while." (Appendix I, p. 12) Furthermore, Parker believed if Edwards was not admitted to a hospital, there would have been nothing to keep him from making bail, (Appendix I, p. 8) and he would have been a threat to Mr. Stills. (Appendix I, p. 9) That was why he signed the petition. (Appendix I, p. 9)

Based on Detective Parker's exculpatory testimony at the civil trial, it is obvious that the State had Edwards committed to prevent him from making bail. It was the only way the State could keep him "locked up" or "imprisoned." The State is now barred from prosecuting Edwards for the same offenses it previously used to commit him.

The State had a duty to disclose this evidence because it was exculpatory and completely supported Edwards' double jeopardy defense. *See Kyles*, 115 S.Ct. 1555. Notwithstanding this duty, the State did not disclose the evidence and violated Edwards' right to due process.

Edwards was prejudiced because this evidence supported his Motion to Dismiss and showed that the State's *purpose* in the involuntary commitment was to prevent Edwards from making bail. It was critical for his defense to know what the State's motive, intent, and *purpose* was in involuntarily committing Edwards. Moreover, the State knew this exculpatory evidence was critical to his defense. Significantly, the trial judge might have ruled differently on the Motion to Dismiss if the truth had been known. *See Bagley*, 473 U.S. at 675. Therefore, the State is barred from prosecuting Edwards.

CONCLUSION

For the foregoing reasons, certiorari should issue to the Supreme Court of Arkansas so that this honorable Court may review and correct the decision below.

Respectfully submitted,

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APPENDIX

APPENDIX A

SUPREME COURT OF ARKANSAS

No. CR 96-10

Joe E. Edwards, *Appellant,*

v.

State of Arkansas, *Appellee.*

[Opinion delivered May 5, 1997.]
328 Ark. 394, 943 S.W.2d 600 (1997)

Appeal from the Washington County Circuit Court, No. CR 95-1047, Hon. Kim M. Smith, Judge, Affirmed.

Robert L. Brown, Associate Justice. Appellant Joe E. Edwards has filed this interlocutory appeal from the trial court's order denying his motion to dismiss on grounds of double jeopardy, estoppel, and due process. The trial court correctly denied the motion to dismiss, and we affirm.

On March 17, 1995, according to the criminal information filed against him, Edwards abducted his attorney, David Stills. During a subsequent deposition, Detective Steve Parker of the Springdale Police Department testified that on that date, he and Detective Lester Coger of the same department responded to a call that an individual, Steve Summers, had found a man who had been tied up on Cambridge Street in Springdale. The man was David Stills, and he told Summers, according to Detective Parker:

> Joe's gone off the deep end. He's accusing me of having sex with his wife and giving her drugs and said he was going to kill us both and then himself.

When Detective Parker arrived at the scene, he found neck ties and duct tape on the ground next to Summers's car.

On March 20, 1995, Detective Parker signed a Petition to Involuntarily Admit Person with Mental Illness that had been prepared by the Washington County Prosecutor's Office. In the petition, he averred that Edwards should be involuntarily admitted to an appropriate facility for treatment of a mental illness based on the following factual assertion:

> The Respondent kidnapped a victim at gun point, tied the victim up, then picked up his wife at her place of employment and returned her to his residence with the purpose of killing her and the other victim.

Detective Parker stated that Edwards presented a clear and present danger to himself or others as defined by Ark. Code Ann. § 20-47-207(c)(1) – (2) (Repl. 1991).

As a result of the petition, the probate court found that there was probable cause to believe that Edwards presented a potential danger to himself and to others and ordered the Washington County Sheriff to take Edwards to the Ozark Guidance Center for detention and evaluation. As a result of the evaluation, the staff psychiatrist at Ozark Guidance Center determined to a reasonable degree of medical certainty that Edwards's mental and medical condition required immediate hospitalization. On March 27, 1995, after Edwards's counsel waived a hearing on the matter, the probate court entered an order committing Edwards to the Psychiatric Intensive Care Unit at Baptist Medical Center in Little Rock for a period of 30 days. In doing so, the probate court again found that there was probable cause that Edwards suffered from a mental disease and constituted a clear and present danger to himself and to others. On April 25, 1995, the probate court ordered Edwards's commitment extended for an addition-

al 90 days based upon his physicians' determination that he required further treatment for his mental condition.

On July 24, 1995, the date he was scheduled to be released, Edwards was charged by the Washington County prosecutor with kidnapping and terroristic threatening in connection with the abduction of David Stills. The probate court also ordered an extension of his commitment until July 28, 1995, during which time he would be released to the custody of a physician who was directed to transport him to the Washington County sheriff's office for arraignment on July 27, 1995. Edwards was arraigned on that date.

On September 15, 1995, Edwards moved to dismiss the criminal charges on grounds of double jeopardy, estoppel, and violation of his due process rights. The prosecutor responded that Edwards's counsel actually drafted the orders and solicited the aid of the prosecuting attorney's office for Edwards's continued treatment at Baptist Medical Center. The State further contended that (1) the estoppel theories did not apply because the involuntary admission of a suspect of a crime does not constitute an adjudication of that person's mental capacity to commit crime; and (2) Edwards was not unduly deprived of his liberty for purposes of double jeopardy because there was no "same offense" for former jeopardy and because Edwards's counsel assisted in the orders for treatment at Baptist Medical Center.

A hearing was held on the motion, and following the hearing, the trial court entered an order denying Edwards's motion. In its ruling from the bench, the trial court noted that the civil commitment was not for an "offense," that civil commitment proceedings and criminal proceedings involved different standards and elements and were gov-

erned by different statutes, and that the burden of proof for the two proceedings was different.

Edwards filed this interlocutory appeal from the trial court's order.

I. Double Jeopardy

We first observe that it is well established that an order denying a motion to dismiss based on double-jeopardy considerations is an appealable decision. *Abney v. United States*, 431 U.S. 651 (1977); *Sherman v. State*, 326 Ark. 153, 931 S.W.2d 417 (1996). The essence of Edwards's double-jeopardy argument is that the State has already taken away his liberty by virtue of the civil commitment and now seeks to prosecute him based on the same conduct, which jeopardizes his liberty once more. He directs our attention to both the Arkansas Constitution and the United States Constitution:

> [A]nd no person, for the same offense, shall be twice put in jeopardy of life or liberty[.]

Ark. Const. art. 2, § 8.

> [N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb[.]

U.S. Const. amend. 5.

The United States Supreme Court has observed that the Double Jeopardy Clause of the United States Constitution provides several protections:

> It protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same

> offense. *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 (1969) (footnotes omitted). These protections stem from the underlying premise that a defendant should not be twice tried or punished for the same offense. *United States v. Wilson*, 420 U.S. 332, 339, 95 S.Ct. 1013, 1020, 43 L.Ed.2d 232 (1975).

Schiro v. Farley, 510 U.S. 222, 229 (1994). *See also Abney v. United States*, 431 U.S. 651, 661 (1977) ("The 'twice put in jeopardy' language of the Constitution thus relates to a potential, i.e., the risk that an accused for a second time will be convicted of the 'same offense' for which he was initially tried."), *quoting Price v. Georgia*, 398 U.S. 323, 326 (1970).

There is no doubt that civil commitment results in a significant deprivation of liberty that requires due process protection. *Addington v. Texas*, 441 U.S. 418 (1979). *See also Vitek v. Jones*, 445 U.S. 480 (1980); *Honor v. Yamuchi*, 307 Ark. 324, 820 S.W.2d 267 (1991). And we have held that the burden of proof on the State for civil commitments is by clear and convincing evidence. *Shock v. Thomas*, 274 Ark. 493, 625 S.W.2d 521 (1981). Yet, Edwards cites us to no authority, and we know of none, where a jurisdiction has held that double-jeopardy protection attaches to civil commitments. Indeed, authority from other jurisdictions appears to stand for just the opposite proposition.

A seminal case in this area is *State v. Hudson*, 425 A.2d 255 (1981). In *Hudson*, the State sought an involuntary commitment for Hudson, relying in part on evidence of a sexual assault conviction. Hudson argued that because he was already tried on the sexual assault charge, the commitment proceedings were barred under principles of double

jeopardy. The Supreme Court of New Hampshire dismissed the argument:

> The defendant misconstrues the nature of the involuntary commitment proceedings. The January 24, 1980, hearing was not held to ascertain the defendant's guilt or innocence concerning the assault or any other charge. Its express and sole purpose was to determine whether the defendant's mental condition was such that he was a danger to himself or others. The mere fact that some of the evidence used to establish the defendant's dangerousness related to an incident for which he had already been tried and convicted does not convert the civil proceeding into a criminal trial.

State v. Hudson, 425 A.2d at 258 (citations omitted). *See also Rodrigues v. Gudeman*, 794 F.2d 1458, 1460 n.2 (9th Cir. 1986) ("A person committed because he is insane is not being 'punished' for a crime."), *cert. denied*, 479 U.S. 964 (1986); *Hubbart v. Superior Court*, 58 Cal.Rptr.2d 268, 286 (Cal. App. 6 Dist. 1996) ("[I]t would be singularly inappropriate to apply double jeopardy provisions to these types of proceedings [commitment under the Sexually Violent Predators Act] where the issue to be determined is not whether respondent committed an act or offense, but whether respondent suffers from a mental condition which makes him dangerous to others."), *quoting People v. Superior Court*, 284 Cal.Rptr. 601, 607 (Cal. App. 2 Dist. 1991); *Matter of Lomax*, 367 A.2d 1272, 1279 (D.C. App. 1976) ("A person alleged to be mentally ill is not on trial for having committed an 'offense', and we do not view civil commitment – aimed basically at treatment for the afflicted individual – as comparable to punishment for the conviction of a crime."), *vacated for other reasons*, 386 A.2d 1185 (D.C. App. 1978); *Matter of Linehan*, 557 N.W.2d 171

(Minn. 1996) (commitment under Sexually Dangerous Persons Act is not "punishment" for purposes of double jeopardy); *People v. Nixon*, 543 N.Y.S.2d 998, 1000 (A.D. 3 Dept. 1989) (stating double jeopardy inapplicable because "the State's objective in confining petitioner is treatment and protection of the public, not punishment or deterrence"); *Matter of Vandenberg*, 617 P.2d 675, 679 (1980) ("[A] mental commitment proceeding, though it involves a serious deprivation of liberty, is not a criminal proceeding.").

The controlling principle in these cases is that double-jeopardy protection attaches only when a person is put at risk of being punished twice for the same offense. In fact, "same offense" is an element expressly referenced in the Arkansas and U.S. Constitutions. We interpret this language to require successive punishments for the same criminal activity. A civil commitment for evaluation and treatment because the patient may be harmful to himself and others simply does not meet the test of prior punishment for a criminal offense, even when the precipitating event for the commitment is a criminal event. We agree with the reasoning of the New Hampshire Supreme Court in *State v. Hudson, supra*, and affirm the trial court on this point.

II. Collateral Estoppel

Edwards next complains that the State is collaterally estopped from arguing that he was not mentally ill, and thus capable of formulating criminal intent, on March 17, 1995. It is clear that the Double Jeopardy Clause incorporates the doctrine of collateral estoppel in criminal proceedings, and for that reason we will consider this argument in this interlocutory appeal. *See Schiro v. Farley, supra; Dowling v.*

United States, 493 U.S. 342 (1990); *Ashe v. Swenson*, 397 U.S. 436 (1970); *Ford v. Wilson*, 327 Ark. 243, 939 S.W.2d 258 (1997); *Sherman v. State*, 326 Ark. 153, 931 S.W.2d 417 (1996).

Generally speaking, collateral estoppel provides "when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." *Schiro v. Farley*, 510 U.S. at 232, *quoting Ashe v. Swenson*, 397 U.S. at 443. This court has required proof of the following elements in order to establish collateral estoppel: (1) the issue sought to be precluded must be the same as that involved in the prior litigation; (2) the issue must have been actually litigated; (3) the issue must have been determined by a final and valid judgment; and (4) the determination must have been essential to the judgment. *In re: Estate of Goston v. Ford Motor Co.*, 320 Ark. 699, 898 S.W.2d 471 (1995); *Crockett & Brown, P.A. v. Wilson*, 314 Ark. 578, 864 S.W.2d 244 (1993). For determining the validity of a collateral-estoppel defense to a criminal prosecution, a defendant must also prove: (1) both adjudicatory entities are the same sovereign; and (2) a factual issue essential to the first verdict is an essential element of the second charge. *Sherman v. State, supra; Fariss v. State*, 303 Ark. 541, 798 S.W.2d 103 (1990). Under these tests, we hold Edwards's contention is without merit.

The civil commitment statute provides that a person may be committed involuntarily if it is determined that, based upon his conduct, he presents a "clear and present danger to himself or others" and there is a "reasonable probability that such conduct will be repeated if admission is not ordered." Ark. Code Ann. 20-47-207(c) (Repl. 1991). In the proceeding for a civil commitment, it was deter-

mined by the probate judge that Edwards was "mentally ill" because he met these statutory criteria.

In contrast, a person may be acquitted for a criminal offense due to mental disease only if he lacked the capacity to form culpable intent according to the dictates of the Arkansas Code:

> It is an affirmative defense to a prosecution that at the time the defendant engaged in the conduct charged, he lacked capacity, as a result of mental disease or defect, to conform his conduct to the requirements of law or to appreciate the criminality of his conduct.

Ark. Code Ann. § 5-2-312(a) (Repl. 1993). Once the State proves the elements of the crime beyond a reasonable doubt, the burden shifts to the defendant to prove the affirmative defense of lack of capacity by a preponderance of the evidence. *Baumgarner v. State*, 316 Ark. 373, 872 S.W.2d 380 (1994); *Phillips v. State*, 314 Ark. 531, 863 S.W.2d 309 (1993); *Mask v. State*, 314 Ark. 25, 858 S.W.2d 1 (1993).

It is readily apparent that the issue of Edwards's capacity to form culpable intent at the time of the events for which he has been charged has yet to be decided. The only issue actually litigated in the civil commitment proceeding was whether Edwards presented a clear and present danger to himself or others – not whether he lacked either the capacity to conform his conduct to the requirements of law or lacked the capacity to appreciate the criminality of his conduct. We do not see the two manifestations of mental illness as being mutually exclusive. Indeed, it appears clear to us that a person may be suicidal and a menace to others but still have the capacity to form criminal intent. Because the two issues, which

present differing standards for mental illness, are not the same, we hold that the State is not collaterally estopped from contending that Edwards had the capacity to form the requisite criminal intent on March 17, 1995.

We are quick to recognize that this is an area that could in some circumstances lend itself to prosecutorial misconduct. Using civil commitments to take a person off the streets without just cause comes to mind as a potential abuse. Here, though, the probate court found Edwards to be a danger to himself and others and he was committed for evaluation and treatment, first for 30 days and then for an additional 90 days. We see nothing nefarious in the State's conduct in this particular case.

III. Other Arguments

Edwards also raises arguments of equitable estoppel, judicial estoppel, and violation of his due-process rights in this interlocutory appeal. These arguments are premature. An interlocutory appeal is available in this situation only to protect against a person's being placed twice in jeopardy for the same criminal offense. Issues pertaining to equitable estoppel, judicial estoppel, and due process do not warrant the protection of an interlocutory appeal, as does a double-jeopardy argument, and may be considered on direct appeal, if necessary.

Affirmed.

APPENDIX B

IN THE CIRCUIT COURT OF
WASHINGTON COUNTY, ARKANSAS

State of Arkansas — Plaintiff

v. Case No. CR-95-1047

Joe E. Edwards — Defendant

ORDER

[Filed October 12, 1995]

On the 12th day of October, 1995, the parties appeared for a hearing on motions. The Defendant appeared in person and through his counsel, Samuel A. Perroni, and the State appeared through its counsel, Terry Jones, Prosecuting Attorney for the Fourth Judicial District. After consideration of the pleadings and arguments of counsel, the Court denies Defendant's Motion to Dismiss on double jeopardy grounds.

IT IS SO ORDERED this 12th day of October, 1995.

/s/ Kim M. Smith,
Circuit Judge

APPENDIX C

IN THE PROBATE COURT OF WASHINGTON COUNTY, ARKANSAS

In the Matter of: P.M. No. 95-112
Joe E. Edwards, Respondent

ORDER FOR IMMEDIATE DETENTION AND EVALUATION

[Filed March 20, 1995 at 12:01 p.m.]

Comes this day before the Court the Petition in the above-styled matter. Said Petition alleges that the Respondent is in such mental condition as a result of mental illness, disease or disorder that he poses a clear and present danger to himself or others. Said Petition prays for the immediate detention and involuntary admission of the Respondent to Ozark Guidance Center, as defined by Act 861 of 1989.

From the Petition and the matters before it, the Court ORDERS:

1. That this Court has jurisdiction over the Respondent and the subject matter thereof, and over this case generally.

2. That there is probable cause to believe the Respondent has a mental illness, disease, or disorder, and by reason thereof, the Respondent poses a clear and present danger to himself or others.

3. The Washington County Sheriff is hereby directed to deliver the Respondent forthwith from Washington County Jail or wherever he may be found to the Ozark Guidance Center.

4. A Probable Cause hearing on this matter shall be held on the 21st day of March 1995, by this Court.

5. The Petitioner shall appear to present the testimony in this matter.

/s/ (illegible)
Probate Judge

APPENDIX D

SUPREME COURT OF ARKANSAS

No. CR 96-00010

JOE E. EDWARDS, *Appellant*

vs.

STATE OF ARKANSAS, *Appellee*

[Filed April 14, 1997]

ORDER DENYING MOTION TO REMAND OR SUPPLEMENT RECORD

Appellant's motion to remand to trial court for hearing or in the alternative to supplement record is denied.

APPENDIX E

SUPREME COURT OF ARKANSAS

No. CR 96-00010

JOE E. EDWARDS, *Appellant*

vs.

STATE OF ARKANSAS, *Appellee*

[Filed June 16, 1997]

ORDER DENYING MOTION FOR STAY

Appellant's motion to stay mandate is denied. Thornton, J., would grant.

APPENDIX F

IN THE CIRCUIT COURT OF
WASHINGTON COUNTY, ARKANSAS
SECOND DIVISION

State of Arkansas — Plaintiff

vs. — No. CR 95-1047

Joe Edwards — Defendant

ORDER SCHEDULING TRIAL

[Filed July 15, 1997]

Now on this 15th day of July, 1997, after having consulted with the attorneys for the parties, the Court finds that the above captioned case should be and hereby is scheduled for a jury trial commencing on October 27, 1997, and continuing through the week of November 3, 1997, if need be. Hearings for pretrial motions are hereby scheduled for October 2, 1997, at 1:30 p.m., and October 16, 1997, at 1:30 p.m.

IT IS SO ORDERED.

/s/ Kim M. Smith
Circuit Judge

APPENDIX G

SUPREME COURT OF ARKANSAS

No. CR 96-00010

JOE E. EDWARDS, *Appellant*

vs.

STATE OF ARKANSAS, *Appellee*

[Filed June 9, 1997]

ORDER DENYING PETITION FOR REHEARING

Petition for rehearing is denied.

APPENDIX H

Arkansas Code Annotated § 20-47-207 provides:

(a) WRITTEN PETITION – VENUE. Any person having reason to believe that a person meets the criteria for involuntary admission as defined in subsection (c) of this section may file a verified petition with the clerk of the probate court of the county in which the person alleged to have mental illness resides or is initially detained.

(b) CONTENTS OF PETITION. The petition for involuntary admission shall:

(1) State whether the person is believed to be of danger to himself or others as defined in subsection (c) of this section;

(2) Describe the conduct, clinical signs, and symptoms upon which the petition is based. Such description shall be limited to facts within the petitioner's personal knowledge;

(3) Contain the names and addresses of any witnesses having knowledge relevant to the allegations contained in the petition;

(4) Contain a specific prayer for involuntary admission of the person to a hospital or to a receiving facility or program for treatment pursuant to § 20-47-218(c).

(c) INVOLUNTARY ADMISSION CRITERIA. A person shall be eligible for involuntary admission if he is in such mental condition as a result of mental illness, disease or disorder that he poses a clear and present danger to himself or others;

(1) As used in this subsection, "a clear and present danger to himself" is established by demonstrating that:

(A) The person has inflicted serious bodily injury on himself or has attempted suicide or serious self-injury and there is a reasonable probability that such conduct will be repeated if admission is not ordered; or

(B) The person has threatened to inflict serious bodily injury on himself and there is a reasonable probability that such conduct will occur if admission is not ordered; or

(C) The person's behavior demonstrates that he so lacks the capacity to care for his own welfare that there is a reasonable probability of death, serious bodily injury, or serious physical or mental debilitation if admission is not ordered.

(2) As used in this subsection, "A clear and present danger to others" is established by demonstrating that the person has inflicted, attempted to inflict, or threatened to inflict serious bodily harm on another, and there is a reasonable probability that such conduct will occur if admission is not ordered.

Arkansas Code Annotated § 20-47-208 provides:

(a)(1) It shall be the duty of the prosecuting attorney's office in the county where the petition is filed to represent the petitioner, regardless of the petitioner's financial status, at all hearings held in the probate court pursuant to this subchapter, except those hearings pending before the magistrate, probate referee, or probate judge at the Arkansas State Hospital in Pulaski County, Arkansas.

(2) The Office of the Prosecutor Coordinator shall appear for and on behalf of the petitioner and State of Arkansas before the mental health magistrate, probate referee, or probate judge at the Arkansas State Hospital. The prosecuting attorneys of applicable counties may contract with other attorneys to provide these services.

(b) Such representation shall be a part of the official duties of the prosecuting attorney or of the prosecutor coordinator, and the prosecuting attorney and the prosecutor coordinator shall be immune from civil liability in the performance of this official duty.

(c) Nothing in this section shall prevent the petitioner from retaining his own counsel in these proceedings, in which case the prosecuting attorney or the prosecutor coordinator shall be relieved of the duty to represent the petitioner.

APPENDIX I

THE SUPREME COURT OF THE STATE OF ARKANSAS

State of Arkansas — Plaintiff

V. — Case No. 96-00010

Joe E. Edwards — Defendant

MOTION TO REMAND TO THE TRIAL COURT FOR A HEARING OR IN THE ALTERNATIVE TO SUPPLEMENT THE RECORD

[Filed March 25, 1997]

[Pertinent text is set forth in as provided in Rule 14.1(g) of the Rules of the Supreme Court.]

Comes the Defendant, Joe Edwards, by and through his attorneys, The Perroni Law Firm, and for his Motion to Remand to the Trial Court for a Hearing or in the Alternative to Supplement the Record states:

1. The State has charged Joe Edwards with kidnapping his attorney and threatening to kill him. These charges arose out of an incident which occurred on March 17, 1995.

2. Mr. Edwards was arrested for these offenses on Friday, March 17, 1995. On Monday morning, March 20, 1995, while Mr. Edwards was still in custody, the State filed a Petition to Involuntarily Admit Person With Mental Illness for the same offenses which resulted in his arrest. The Petition stated, among other things, that Joe Edwards was believed to have a mental illness and that he should be

involuntarily admitted to the appropriate receiving facility or program. The State was successful in its Petition and, thirty six (36) minutes after the Petition was filed, obtained the entry of an Order involuntarily committing Mr. Edwards. Thereafter, three (3) subsequent Orders were entered continuing Mr. Edwards' detention.

3. On July 24, 1995, the State filed its Felony Information against Mr. Edwards. Mr. Edwards' defense to the prosecution was that he lacked capacity, as a result of mental disease or defect, and was unable to conform to the requirements of law or to appreciate the criminality of his conduct. Mr. Edwards moved to dismiss the criminal charges on the basis of double jeopardy and to bar the State from challenging the issue of mental illness because the State had alreay involuntarily committed him for the same offenses as contained in the Felony Information. On April 12, 1996, the Honorable Kim Smith, Washington County Circuit Judge, denied the Motion to Dismiss. It is from this decision that Mr. Edwards has taken this interlocutory appeal.

4. The issue before this Court relates to the Defendant's claim of double jeopardy as a result of the State both involuntarily committing him for mental illness and prosecuting him for the same March 17, 1995 incident in which Joe Edwards kidnapped David Stills.

5. The State has responded, contending among other things, that the involuntary commitment of the Defendant did not constitute a deprivation of liberty for due process purposes.

6. Since the lodging of this appeal, a trial has taken place in a civil matter which arose out of the same March 17, 1995 incident in which Joe Edwards kidnapped David

Stills (*Stills, et al. v. Edwards, et al*, Washington County Circuit Court No. CIV- 95-692).

7. Detective Steve Parker of the Springdale Police Department signed the petition for Involuntary Commitment of the Defendant in connection with the criminal action.

8. Detective Steve Parker also testified during the civil trial. A copy of the Redirect and Re-Cross Examination of Detective Parker's testimony is attached hereto as Exhibit A and incorporated by reference.

9. An abstract of this testimony is attached hereto as Exhibit B and incorporated by reference.

10. This testimony established, among other things, that:

(a) Detective Parker believed that Joe Edwards had a constitutional right to make bail. [p. 9]

(b) Dective Parker believed that if he did not sign the Petition to Involuntarily Commit Joe Edwards and he had made bail, that he would pose a threat to David Stills. [pp. 8-9] That is the reason that Detective Parker signed the petition. [p. 9]

(c) If Joe Edwards was not admitted to a hospital, there would not have been anything to keep him from making bond. [p. 11]

(d) Involuntarily committing Mr. Edwards was one way of making sure that Mr. Edwards didn't make bond and that he stay incarcerated. [p. 12]

(e) Detective Parker also stated that he thought "Mr. Edwards was still a threat to Mr. Stills and being in a mental facility would keep him there for a while." [p. 12]

11. These issues are directly relevant to the issues before the Court because the Defendant contended that the filing of the involuntary petition denied him his constitutional right to bail.

12. The State has denied these charges and argued that the involuntary commitment was not used as a method to deprive Joe Edwards of his constitutional right to bail.

13. The testimony of Detective Parker (brought out through examination by David Stills' attorney) establishes that the Defendant's contention is correct and that the involuntary commitment of Joe Edwards was utilized to prevent him from exercising his constitutional right to bond or bail and, as such, constituted deprivation of his liberty.

14. This case should be remanded to the trial court *only* to receive evidence of double jeopardy.

15. If the case is not remanded to the trial court to receive evidence of double jeopardy, the record should be supplemented with the testimony by Detective Steve Parker which is attached. (See Exhibit B)

WHEREFORE, Defendant Joe Edwards prays that this Court grant his Motion to Remand to the Trial Court for a Hearing *only* to receive evidence from Detective Steve Parker that Joe Edwards was involuntarily committed to prevent him from making bond or bail or in the alternative to supplement the record with the testimony given by Detective Steve Parker at the civil trial, and for all other just and proper relief to which Mr. Edwards may be entitled.

Respectfully submitted,
/s/ Samuel A. Perroni, Esq.
Patrick R. James, Esq.

IN THE CIRCUIT COURT OF
WASHINGTON COUNTY
SECOND DIVISION

David Stills and Tanya Stills,
Husband and Wife — Plaintiffs

VS. No. CIV 95-692

Janice Edwards, as Guardian of
Joe Edwards — Defendant

RELEVANT PORTIONS OF THE REDIRECT AND RECROSS EXAMINATION TESTIMONY OF STEVE PARKER

(Exhibit A)

BE IT REMEMBERED that beginning on the 20th day of February, 1997, before the HONORABLE KIM M. SMITH, Judge within and for the Fourth Judicial District, of which Washington County is a part, the above styled cause was tried before a jury.

* * *

STEVE PARKER

having been called by and on behalf of the Plaintiff, and having been duly sworn, was examined and testified as follows, to-wit:

REDIRECT EXAMINATION
By Counsel for Plaintiffs

* * *

Q [D]id anything [David Stills said] suggest to you that that's what was on David Stills' mind?

A No. The only thing was whether or not Mr. Edwards was going to jail or not.

Q Okay. I want to go back now once again to this deposition business. Look at page 39. Isn't that the page where he was asking you questions earlier?

A Yes.

Q Once again suggesting that he was a lot better? Wasn't that what he asked you?

A Yes, sir.

Q Let's read it again.

A "What was the next contact with David Stills?"

Q Begin at line 2. Question: "What did he tell you?" Answer?

A "He was getting by."

Q Did he say, "I'm a lot better"? I'm not reading the deposition now. I'm asking you, Mr. Parker, did he tell you when he called, "I'm a lot better"?

A No, he just said he was getting by.

Q "I'm over this, I'm back at it"?

A No.

Q "I'm getting by."

A Yes.

Q Then did he want to know where Joe Edwards was?

A Yes.

Q Did he ask about the commitment?

A Yes.

Q Now, I want to talk to you about that. Mr. James brought up the fact that you signed to involuntarily commit a person with a mental illness, and I believe he elicited from you that you were asked to do that by Mr. Varner.

A Yes.

Q And you had never met Mr. Perroni?

A No.

Q Is it customary and usual for the prosecuting attorney's office to inform you of every conversation they have with people's lawyers?

A No.

Q Is it an uncommon experience for you to be asked to do something by the prosecuting attorney's office and find out later that that was done pursuant to discussions between lawyers?

A No, it's not uncommon.

Q Did you just do what you were asked?

A I did.

Q All right. Now, you were asked to sign this Petition to Involuntarily Admit Person With Mental Illness. Does it say anywhere on there that Mr. Edwards was so mentally ill that he couldn't understand the criminality of his conduct or conform his behavior to the requirements of the law?

A No.

Q No. In fact, if you will look to the second page, what's the very first criteria that determines whether or not a person ought to be admitted involuntarily, Mr. Parker? Read that for us.

A "A clear and present danger to himself or herself is established by demonstrating that person has inflicted serious bodily injury on himself or has attempted suicide or serious self-injury, and there is a reasonable probability that such conduct will be repeated if admission is not ordered."

Q Okay. Had he done serious harm to anybody?

A Yes, sir.

Q What's the second basis? I'm sorry, I've actually asked you about A, and I meant to ask you about B. Read it all, I don't care.

A "The person has threatened to inflict" – you want B?

Q Uh-huh.

A "A clear and present danger to others as established by demonstrating that the person has inflicted, attempted to inflict or threatened to inflict serious bodily harm to another, and there is a reasonable probability that such conduct will occur if admission is not ordered."

Q Had he done that?

A Yes, sir, he had.

Q To whom had he done that?

A To David Stills.

Q Was there fear in your mind that if he was bonded out of jail that he would pose a threat to David Stills?

A Yes.

Q If he wasn't admitted to a hospital, would there have been anything to keep him from making bond?

A No.

Q In fact, is it not a constitutional right of individuals being held in jail to ask for and post a bond?

MR. PERRONI: Your Honor, excuse me. Mr. Matthews has forgotten again. This is his witness and he is leading his witness.

MR. MATTHEWS: That wasn't a leading question, Your Honor.

THE COURT: Well, I'm going to ask you to rephrase it, Mr. Matthews.

Q [Mr.Matthews continuing] Mr. Parker, you've been to school and been taught to be a police officer. Are there constitutional rights people have about making bail?

A Yes, sir.

Q What are they?

A Not to be excessive, for one, and that each individual is given the opportunity to post bail.

Q And in your opinion, at the time you signed this petition to involuntarily admit Joe Edwards, had he make bail, would he pose a threat to this young man sitting right here?

A I believe yes.

Q Is that why you signed the petition?

A Yes.

* * *

RECROSS EXAMINATION
By Counsel for Defendant

* * *

Q Now, we talked about the commitment. Do you still have that petition in front of you?

A No.

Q Let me give you another copy since the jury has got it. Now, Mr. Matthews just spent a great deal of time referring to the second page and that little asterisk there, is that right?

A The second page?

Q Yes, sir. And had you read all that stuff on clear and present danger?

A Yes.

Q Now, if you turn back to the first page, the sentence for which the asterisk is located reads "that he is believed to be a clear and present danger to himself or others as defined below." And then you turn to the second page and you read the definition to clear and present danger, is that right?

A Yes.

Q That's not a definition of mental illness, is it?

A No, sir.

Q It's a definition of "clear and present danger." Would you – well, let me ask you this, does the Washington County Prosecuting Attorney's Office file a Petition to Involuntarily Admit Person With Mental Illness every time that there is a kidnapping or any type of felony?

A No.

Q So if they then do it because he was a clear and present danger, they did it, among other reasons, because of the mental illness, is that right?

A Yes.

Q And if you read the sentence, or the first paragraph, it says, "The undersigned on oath states that Joe Edwards, a resident," blah, blah, blah, and it refers to Joe Edwards, and you're saying this under oath, correct?

A Correct.

Q And the petition that the Washington County Prosecuting Attorney's Office gave you then says, "Is believed to have mental illness and should be involuntarily admitted to the appropriate treatment facility." Is that right?

A Yes.

Q Now, Mr. Perroni wasn't there, wasn't he?

A No.

Q He didn't have any involvement, at least based on your knowledge?

A Yes. None that I'm aware of.

Q And by the way, one other question. Joe Edwards never got bond, did he, at least at that time? We know he did in July, but in March he didn't get bond, did he?

A I don't know, to tell you the truth. I have no idea.

Q But by being committed to a mental health facility, he wasn't eligible for bond, was he?

A Correct.

Q And that was one way of making sure that Joe didn't make bond and that he stayed incarcerated. Is that an accurate statement, sir?

A Uh-huh.

Q You need to answer "yes" for the court reporter.

A Yes. I'm sorry.

MR. JAMES: Thank you.

THE COURT: Mr. Matthews, anything else?

REDIRECT EXAMINATION

BY MR. MATTHEWS:

Q Wasn't that in fact your reason for signing the petition, so he wouldn't make bond, Mr. Parker?

MR. PERRONI: Your Honor, excuse me. Before Mr. Matthews gets wound up again, I'm objecting to him leading his own witness.

THE COURT: Well, rephrase the question, Mr. Matthews.

Q [Mr. Matthews continuing:] What were the thoughts that went through your mind, Detective Parker, when you signed this petition?

A That Mr. Edwards was still a threat to Mr. Stills and that being in a mental facility would keep him there for awhile.

* * *

Synopsis of
REDIRECT AND RECROSS EXAMINATION
TESTIMONY OF STEVE PARKER

(Exhibit B)

Redirect Examination by David Matthews

* * *

I signed a form to involuntarily commit a person with a mental illness. I was asked to do that by Mr. Varner. It is not customary and usual for the prosecuting attorney's office to inform me of every conversation they have with someone's lawyers. It is not uncommon for me to be asked to do something by the prosecuting attorney's office and find out later that that was done pursuant to discussions between lawyers. I did what I was asked. I was asked to sign this Petition to Involuntarily Admit Person With Mental Illness. It does not say anywhere on there that Mr. Edwards was so mentally ill that he couldn't understand the criminality of his conduct or conform his behavior to the requirement of the law. [Redirect Examination of Detective Parker, Exhibit A, p. 7]

The criteria for determining whether a person ought to be admitted involuntarily is "A clear and present danger to others as established by demonstrating that the person has inflicted, attempted to inflict or threatened to inflict serious bodily harm to another, and there is a reasonable probability that such conduct will occur if admission is not ordered." Mr. Edwards had done that to David Stills. There was a fear in my mind that if he was bonded out of jail that he would pose a threat to David Stills. If he wasn't admitted to a hospital, there would have been nothing to

keep him from making bond. [Recross Examination of Detective Steve Parker, Exhibit A, pp. 7-8]

* * *

Redirect Examination by David Matthews

People have constitutional rights about making bail. Bond can not be excessive and each individual is given the opportunity to post bail. At the time I signed this petition to involuntarily admit Joe Edwards he would have posed a threat to David Still if he made bail. That is why I signed the petition. [Redirect Examination of Detective Parker, Exhibit A, p. 9]

* * *

Recross Examination by Patrick James

By being committed to a mental health facility, Joe Edwards wasn't eligible for bond. That was one way of making sure that Joe didn't make bond and that he stayed incarcerated. [Recross Examination of Detective Parker, Exhibit A, p. 11]

* * *

Redirect Examination by David Matthews

When I signed the petition I thought Mr. Edwards was still a threat to Mr. Stills and that being in a mental facility would keep him there for awhile. [Redirect Examination of Detective Parker, Exhibit A, p. 12]

APPENDIX J

Synopsis of question by the Honorable Justice Donald Corbin of the Supreme Court of Arkansas raised during Oral Argument on April 21, 1997:

Whether the State failed to disclose exculpatory evidence.

APPENDIX K

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS

State of Arkansas — Plaintiff

v. Case No. CR-95-1047

Joe E. Edwards — Defendant

DEFENDANT'S MOTION FOR DISCOVERY

[August 2, 1995]

The Defendant, Joe E. Edwards, moves the Court to require the State to provide the following, in accordance with Ark. Rules Crim. Pr. 17.1, 17.3 and 17.4:

1. The Defendant requests the following material and information that is or may come within the possession, control or knowledge of the prosecuting attorney:

(a) The names and addresses of persons the prosecuting attorney intends to call as witnesses at any hearing or at trial;

(b) Any written or recorded statements and the substance of all oral statements made by the Defendant;

(c) Any reports or statements of experts made in connection with this case, including results of scientific tests, experiments or comparisons;

(d) Any books, papers, documents, photographs or tangible objects the prosecuting attorney intends to use in any hearing or at trial or that were obtained from or belong to the Defendant;

(e) Any record of prior criminal convictions of persons the prosecuting attorney intends to call as witnesses at any

hearing or at trial, if the prosecuting attorney has such information or it can be readily obtained by him;

(f) Whether there has been any electronic surveillance of the Defendant's premises or of conversations to which the Defendant was a party;

(g) The transcript of any relevant prior testimony, whether before a grand jury or in any other proceedings that may have been held in this case, including, but not limited to, municipal court testimony.

2. The prosecuting attorney should disclose and permit inspection and copying of any relevant material regarding:

(a) Any search and seizure of Defendant;

(b) The acquisition of any statements from the Defendant;

(c) Any police reports made in connection with this case that relate to potential testimony of any police officers or other witnesses;

(d) Any physical, documentary, scientific, demonstrative or photographic evidence the State intends to introduce or use at any hearing or at trial.

3. The prosecuting attorney shall disclose to defense counsel any material or information within his knowledge, possession or control, or in the hands of any law enforcement agency, that could negate the guilt of the Defendant of the offense charged or could reduce the punishment therefor.

4. The prosecuting attorney should disclose whether any requests for or offers of immunity, leniency, sentence or charge concessions, or other inducements have been made by or to any potential witness or informant.

The Defendant requests this information as soon as possible before trial. The State should consider this a continuing motion, with all information received by the State to the date of trial to be furnished to the Defendant in compliance with Ark. Rules Crim. Pro., Rule 19.2.

Respectfully submitted,

JOE E. EDWARDS, Defendant

By: Samuel A. Perroni, Bar No. 74119

APPENDIX L

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS

State of Arkansas — Plaintiff

v. Case No. CR-95-1047

Joe E. Edwards — Defendant

DEFENDANT'S SPECIFIC MOTION FOR EXCULPATORY EVIDENCE

[Filed August 2, 1997]

Comes now the Defendant, Joe E. Edwards, by and through his counsel, Samuel A. Perroni, and moves this Court for an Order directing the prosecution to provide the following specific exculpatory evidence pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny:

1. The names of any and all persons in the prosecuting attorney's office, sheriff's office, or Fayetteville Police Department and/or Springdale Police Department, who talked with Joe Edwards about his wife, Janice Edwards, having drug problems and being addicted to drugs and/or who may have assisted him in investigating the aforementioned allegations.

2. Any and all incident reports; memoranda of interview; notes; complaint reports; investigative reports; correspondence or other memoranda in any way relating to contacts by Joe Edwards with any of the above-referenced law enforcement agencies concerning his wife's alleged drug activities, drug addiction, or receiving or distributing drugs.

3. The identities of any and all persons who assisted or participated in any way in the petition for involuntary commitment filed before the chancery/probate court on March 20, 1995, that resulted in an order being entered on March 20, 1995, involuntarily committing Joe Edwards. This would include, but not be limited to, the names of any law enforcement officers or detectives; the names of any prosecuting attorneys or their staff; the names of any police officers or their staff; and the names of any other persons who may have assisted in the preparation of the petition.

WHEREFORE, the Defendant prays for an Order of this Court granting his motion and for any and all other proper relief.

Respectfully submitted,

JOE E. EDWARDS, Defendant

By: Samuel A. Perroni, Bar No. 74119

APPENDIX M

IN THE PROBATE COURT OF WASHINGTON COUNTY, ARKANSAS
FIRST DIVISION

In the Matter of:

Joe E. Edwards, Respondent P. M. No. 95-112

Petition to Involuntarily Admit Person with Mental Illness

[Filed on March 20, 1995 at 11:25 a.m.]

The undersigned on oath states that JOE E. EDWARDS, a resident of Washington County, State of Arkansas, is believed to have a mental illness and should be involuntarily admitted to the appropriate receiving facility or program for treatment of mental illness. He/She is believed to be a clear and present danger to himself/herself or others as defined below.*

Describe person's conduct, clinical signs and symptoms in detail, including time and place of occurrence. Such description shall be limited to facts within the Petitioner's personal knowledge. List names and addresses of witnesses having knowledge relevant to allegations contained in the Petition.

Conduct – Signs/Symptoms:

The Respondent kidnapped a victim at gun point, tied the victim up, then picked up his wife at her place of employment and returned her to his residence with the purpose of killing her and the other victim.

Time and Place of occurrence:

2601 Cambridge, Springdale, AR on 3/17/95.

Witnesses & Addresses:

Detective Steve Parker, Springdale Police Department
Janice Edwards, 2601 Cambridge, Springdale, AR

WHEREFORE, Petitioner prays that the Court issue an Order of Involuntary Admission of Joe E. Edwards to Ozark Guidance Center for care and treatment.

My relationship to the person: Police Office, SPD
My address is: Administration Building, Springdale, AR

NOTE: Petitioner must supply the information requested on the next page of this Petition.

/s/ Det. Steve Parker

Subscribed and sworn to before me this 20th day of March, 1995.

/s/ Sandra S. Carlisle
Notary Public

My Commission Expires: Jan. 25, 2003

*(a) A clear and present danger to himself/herself is established by demonstrating that: (1) the person has inflicted serious bodily injury on himself or has attempted suicide or serious self-injury and there is a reasonable probability that such conduct will be repeated if admission is not ordered; or (2) the person has threatened to inflict serious bodily injury on himself/herself and there is a reasonable probability that such conduct will occur if admission is not ordered; or (3) the person's behavior demonstrates that he/she so lacks the capacity to care for his/her own welfare that there is a reasonable probability of death, serious bodily injury, or serious physical or mental debilitation if admission is not ordered.

(b) A clear and present danger to others is established by demonstrating that the person has inflicted, attempted to inflict, or threatened to inflict serious bodily harm to another, and there is a reasonable probability that such conduct will occur if admission is not ordered.

APPENDIX N

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS

State of Arkansas

vs. CR 95-1047

Joe E. Edwards
DOB: 08-06-39 W/M
SS#: 432-72-5703

1 Count Kidnapping, Y felony
1 Count Terroristic Threatening, D felony

FELONY INFORMATION

[Filed July 24, 1995]

I, TERRY D. JONES, Prosecuting Attorney within and for the Fourth Judicial Circuit of the State of Arkansas, of which Washington County is a part, in the name and by the authority of the State of Arkansas, on oath, accuse the defendant of the crime of:

COUNT 1 – KIDNAPPING, Class Y felony, in violation of ACA § 5-11-102, committed as follows:

On or about March 17, 1995, defendant unlawfully, feloniously and without consent, restrained another person so as to interfere substantially with his liberty with the purpose of inflicting physical inury upon him or of terrorizing him, against the peace and dignity of the State of Arkansas *to-wit:* The defendant captured his attorney, David Stills, at gunpoint, took him to 2601 Cambridge Street in Springdale where he tied him to a table with duct

tape and neckties, threatened to kill him, then continued preparations to kill him by seeking out a second proposed victim.

COUNT 2 – TERRORISTIC THREATENING IN THE 1ST DEGREE, Class D felony, in violation of ACA § 5-13-301, committed as follows:

On or about March 17, 1995, defendant unlawfully, feloniously and with the purpose of terrorizing another person, threatened to cause death to another person *to-wit:* Defendant threatened to kill David Stills while pointing a loaded gun at him against the peace and dignity of the State of Arkansas.

/s/ Terry D. Jones
Prosecuting Attorney

Subscribed and sworn to before me this 21st day of July, 1995.

/s/ Sandra S. Carlisle
Notary Public

My Commission Expires: Jan. 25, 2003